



Billing Code: 8025-01

## SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

RIN: 3245-AG01

Management and Technical Assistance Service Providers Information

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to amend its regulations to establish for the affected public that existing Agency standards governing the use and disclosure of information also apply to information collected from SBA's resource partners, including Small Business Development Centers (SBDCs), Women's Business Centers (WBCs) and SCORE, as well as from the clients of these resource partners. The rule covers information collected when conducting financial examinations, programmatic reviews, polls, surveys, and any other collections of information.

DATES: SBA must receive comments to this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN: 3245-AG01, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail, for paper, disk, or CD-ROM submissions: Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration,

Office of Entrepreneurial Development, 409 Third Street, SW,  
Washington, DC 20416.

- Hand Delivery/Courier: Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments to this proposed rule on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, 409 Third Street, SW, Washington, DC 20416, or send an email to [eric.won@sba.gov](mailto:eric.won@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, (202) 205-6923 or [eric.won@sba.gov](mailto:eric.won@sba.gov).

SUPPLEMENTARY INFORMATION: SBA's Office of Entrepreneurial Development (OED) provides management and technical assistance to small businesses through its resource partners, including Small Business Development Centers (SBDCs), Women's Business Center (WBCs), and SCORE. OED monitors the Agency's resource partners by performing financial examinations and programmatic reviews to determine whether they are utilizing SBA financial assistance efficiently and effectively. OED also measures the

impact of the resource partners' services by conducting polls and surveys of those individuals and small businesses that receive management and technical assistance through the resource partners.

Sections 21(a)(7)(c) and 29(n)(3) of the Small Business Act, (15 U.S.C. 648(a)(7)(c) and 656(n)(3)), direct SBA to promulgate regulations to establish standards for the disclosure and use of certain client information when the Agency conducts a financial audit of an SBDC or WBC or conducts surveys of SBDC clients. In the absence of these regulations, SBDCs and WBCs are prohibited from disclosing certain identifying information to SBA, without the consent of the resource partners' clients, unless a court orders SBA to disclose the information in a civil or enforcement action brought by a Federal or State agency or unless SBA considers the information necessary to conduct a financial audit. As discussed below, for purposes of this rule the term "financial audits" refers to OED conducted financial examinations and programmatic reviews. The definition of "audit" does not apply to audits, investigations, or other activities conducted by the SBA's Office of Inspector General or a financial statement audit. Section 21(a)(7)(c) also requires SBA to include in the regulations standards for the oversight of client surveys and "to the extent practicable, provide for the maximum amount of privacy protection" for the information collected. Until SBA issues regulations, the SBA Office of Inspector General must approve any client survey and information collected.

This rule proposes to implement the two statutory provisions described above by adding a new Subpart C, consisting of sections 102.50 through 102.56, to the Agency's Record Disclosure and Privacy regulations at 13 CFR part 102. This proposed rule does not set new standards for the disclosure and use of information because SBA already has

standards in place. Rather, this rule would make it clear that those existing standards also apply to information collected from resource partners and their clients. This proposed rule, therefore, proposes to incorporate the standards in § 102.7 that govern the protection and disclosure of confidential business information, as well as the standards in § 102.22 that cover the protection and disclosure of personal information under the Privacy Act of 1974, 5 U.S.C. 552a, and apply them to SBA's resource partners and their clients.

The standards are found in 13 CFR part 102; the SBA Privacy Act Standard Operating Procedures (SOP) 40 04 3 (<http://collab.sba.gov/sops/Documents/4004/SBASOP-40-04-3.pdf>); and the Disclosure of Information SOP 40 03 <http://collab.sba.gov/sops/Documents/4003/SOP400331.doc>. SBA also has a Privacy Act System of Records that covers the pertinent information collected from resource partners and their clients. See SBA 11, Entrepreneurial Development – Management Information System, 74 FR 14890 (April 1, 2009), at [http://www.sba.gov/sites/default/files/Federal\\_Register\\_Revision\\_of\\_Privacy\\_Act\\_System\\_of\\_Records.pdf](http://www.sba.gov/sites/default/files/Federal_Register_Revision_of_Privacy_Act_System_of_Records.pdf).

Additionally, although the Small Business Act requires the publication of these regulations only for SBDCs and WBCs, SBA proposes to extend the same disclosure and use standards to information collected during financial examinations and programmatic reviews, polls and client surveys pertaining to all of SBA's resource partners to ensure uniform standards for all of SBA's grantees, including SCORE, Veterans Business Outreach Centers (VBOCs) and Microloan Intermediaries.

SBA requests comments on all aspects of this rulemaking, which as stated above, is intended to clearly establish that information collected by SBA from SBDCs, WBCs,

SCORE, and other SBA grantees and their client small businesses is protected under the FOIA and Privacy Acts, as implemented by SBA in its regulations at 13 CFR part 102 and its standard operating procedures.

#### Section by Section Analysis

Section 102.50, Purpose and Scope, proposes that the purpose of these regulations is to establish standards for the disclosure of information collected, including the name, address, or telephone number of any individual or small business concern receiving assistance from SBA through its resource partners. The scope of the regulations covers but is not limited to, SBA conducted financial examinations or programmatic reviews of SBA resource partners, and polls or surveys of the resource partners or their clients.

Section 102.51, Definitions, sets forth terms applicable to this subpart, and which, in general are currently used in the various entrepreneurial development programs and as such are already familiar to the resource partners.

Section 102.52, Standards for Disclosure and Use of Information, informs the public that SBA's existing standards for disclosure and use of information also apply to information collected from resource partners and their clients.

Section 102.53, Data Collection Methodologies, would provide that all data collection methods will be consistent with existing federal regulations, policies and procedures.

Section 102.54, Use of Program Activity or Survey and Poll Data, proposes that the purposes for collecting program activity data using surveys or polls include: (1) measuring the effect and economic impact of Agency programs; (2) measuring the public benefit of such programs (3) evaluating customer satisfaction ; (4) assessing public

and resource partner needs to make improvements to programs and policies; and (5) determining the level and types of managerial, financial, marketing and other business management or specialized services provided.

Section 102.55, Use of Financial Examination or Programmatic Review Data, proposes how SBA would use the client information collected during a financial examination or programmatic review. Specifically, the information would be used to assess the quality, quantity and scope of the client services provided, compliance with program requirements and the appropriateness of program activities or costs incurred.

Compliance with Executive Orders 12866, 12988, and 13132, 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Order 12866

The Office of Management and Budget (OMB) determined that this proposed rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and also that this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have a retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities

among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

#### Executive Order 13563

As part of its ongoing efforts to engage stakeholders in the development of its regulations, SBA conducted a series of conference calls with resource partner representatives (Small Business Development Centers, Women's Business Centers and SCORE) to review the intent of the new rule and various components related to it. No concerns were raised during those calls and no comments were raised that needed to be addressed in this rule. SBA also coordinated development of this rule with its Office of Inspector General, which has statutory approval responsibility to approve client surveys until this rule is finalized.

#### Paperwork Reduction Act, 44 U.S.C., Ch.35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose any reporting or recordkeeping requirements. SBA will continue to follow the Paperwork Reduction Act requirements, including obtaining OMB's review and approval, for any current or future surveys, polls and other collections of information from the resource partners and their clients.

#### Regulatory Flexibility Act, 5 U.S.C. 601-612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the

impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

In Fiscal Year 2013 (the most current year for which complete information is available), there were 63 SBDCs serving 332,421 clients; 102 WBCs serving 136,951 clients; SCORE served 458,773 clients; and VBOCS served 80,000 clients. For Fiscal Year 2014, SBA received \$113,625,000 for SBDCs; \$14,000,000 for WBCs; \$7,000,000 for SCORE; and \$2,500,000 for VBOCs . SBA does not have data on how many of these entities are small under the applicable North American Industry Classification System (NAICS) codes set forth in 13 CFR part 121. Therefore, SBA requests information on how many of the SBDCs, WBCs, SCORE, and VBOC entities are considered small under the NAICS codes.

Even if all of these entities are small, SBA believes that this rule would not have a significant economic impact on them. The rule would not require additional expenditures or impose any new requirements on these entities, including collection of information requirements as that term is defined by the Paperwork Reduction Act. Rather, as stated above, the rule would merely establish how SBA would handle any information the Agency collects from the resource partners and their clients. Specifically, the rule would make it clear that existing SBA standards for the disclosure and use of information would also apply to any such information collected. SBA is responsible for complying with the requirements of the proposed rule, not the SBDCs, WBCs, SCORE, or VBOCs. Nonetheless, SBA also requests public comments on any impact this proposed rule would have on these organizations.



With respect to the small businesses that obtain counseling and training from these entities, there would be no economic impact from this proposed rule as well. The disclosure and protection standards discussed in the rule applies to the information collected from all such businesses that obtain services from an SBDC, WBC, SCORE or VBOC entity; however, the rule would not impose any requirements on these businesses to provide the information or to take any other action.

Based on the reasons stated above and for purposes of the RFA, SBA certifies that this rule would not have a significant economic impact on a substantial number of the SBDCs, WBCS, SCORE or VBOC entities, and the small businesses that receive services from them.

#### List of Subjects in 13 CFR Part 102

Freedom of information, Privacy, Grants.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 102 as follows:

#### PART 102 – RECORD DISCLOSURE AND PRIVACY

1. The authority citation for part 102 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 15 U.S.C. 648(a)(7) and 656(n); 31 U.S.C. 9701; 44 U.S.C. 3501, E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Add subpart C to read as follows:

#### Subpart C – Standards for Collection and Use of Program Activity Data and Surveys

Sec.

102.50 Purpose and scope.

102.51 Definitions.

102.52 Standards for disclosure and use of information.

102.53 Data collection methodologies.

102.54 Use of program activity or survey and poll data.

102.55 Use of financial examination and programmatic review data.

§ 102.50 Purpose and scope.

The purpose of these regulations is to establish standards for the disclosure of information collected from any individual or small business concern receiving assistance from SBA through its resource partners. The scope of these regulations is limited to SBA conducted financial examinations or programmatic reviews of a resource partner, or a survey or poll conducted of an SBA resource partner's clients.

§ 102.51 Definitions

Audit means a financial examination or programmatic review conducted by the Office of Entrepreneurial Development. This provision does not apply to audits, investigations or other activities conducted by the SBA's Office of Inspector General (OIG) or a financial statement audit.

Client means a person or small business that receives management or technical assistance from SBA, an SBA resource partner, an approved SBA lender, or any other provider participating in any of SBA's programs. The assistance is direct or indirect and may also include loans, or investments or other such activities as enumerated in agreements or funding documents between the resource partner and SBA.

Customer Satisfaction means the degree to which clients would recommend the service received to other small business individuals and/or that they were generally pleased with the service provided to them and would use the service again.

Examination means a financial examination or programmatic review. This provision does not apply to audits conducted by the SBA's Office of Inspector General (OIG) or a financial statement audit.

Poll means an informal, voluntary data collection that contains broad based questions that place little to no burden on the respondent. A Poll is anecdotal and not statistical in nature, and is used to gain a quick view of a particular issue. A Poll does not collect information protected under the Privacy Act of 1974.

Program Activity Data means data collected through any methods established by or on behalf of SBA concerning a resource partner's client activity, including but not limited to, counseling, training, and other technical assistance activities.

Resource Partner means any grantee, subrecipient, or system of grantees and subrecipients that enters into a formal agreement with SBA to deliver small business management and technical assistance to the general public, small business concerns and/or any specialized assistance related thereto.

Submitter means any person or entity that provides information to SBA through a data collection system, survey, poll, financial examination, programmatic review or other data collection activity.

Survey means a collection of data whose purposes include the description, estimation, or analysis of the characteristics of groups, organizations, segments, activities, or geographic areas.

#### § 102.52 Standards for disclosure and use of information.

The standards in subparts A and B of 13 CFR part 102 relating to privacy and disclosure of information collected and maintained by the SBA apply to the disclosure and use of information collected from resource partners and their clients.

#### § 102.53 Data collection methodologies.

All data collection methodologies utilized will be consistent with relevant Federal rules and regulations, including the Paperwork Reduction Act, and SBA standard operating procedures.

§ 102.54 Use of program activity or survey and poll data.

Program activity and client survey or poll data are collected for the purposes of:

- (a) Measuring the effect and economic or other impact of Agency programs;
- (b) Assessing public and resource partner needs;
- (c) Measuring customer satisfaction;
- (c) Guiding program policy development;
- (d) Improving grant-making processes;
- (e) Improving relationship management with these entities; and
- (f) Other areas SBA determines would be valuable to strengthen programs and/or

enhance support for clients.

§ 102.55 Use of financial examination or programmatic review data.

Financial examination or programmatic review data regarding client information is collected, to the extent necessary, for the purposes of:

- (a) Assessing the quality, quantity and scope of client service provided;
- (b) Ensuring compliance with the governing rules and program requirements;
- (c) Determining the appropriateness of activities conducted under the program and/or cost incurred by submitters such as grantees, resource partners, contractors, lenders and other program stakeholders; and
- (d) Other areas relevant to SBA oversight of its programs.

This data is separate from ongoing program activity data and does not interfere with the collection of that information.

Dated: March 31, 2014.

Marianne O'Brien Markowitz,  
Acting Administrator.

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